

SUPERIOR COURT ✓  
YAVAPAI COUNTY, ARIZONA

2010 JUL -9 PM 4:47

JEANIE JACKS CLERK  
**S. KELBAUGH**

BY: \_\_\_\_\_

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9  
10 **IN THE SUPERIOR COURT**

11 **STATE OF ARIZONA, COUNTY OF YAVAPAI**

12 STATE OF ARIZONA,

V1300CR201080049

13 Plaintiff,

MOTION TO STRIKE:

14 vs.

15 JAMES ARTHUR RAY,

16 Defendant.

17 "DECLARATIONS" AND  
18 SUPPORTING EXHIBITS FILED WITH  
19 DEFENDANT'S MOTION TO CHANGE  
20 PLACE OF TRIAL PURSUANT TO  
21 ARIZ. R. CRIM. P. 10.3; DEFENDANT'S  
22 MOTION TO COMPEL DISCLOSURE  
23 OF ALL INFORMATION AND  
24 MATERIAL REGARDING THE MEDICAL  
25 EXAMINERS' OPINIONS ON CAUSE OF  
26 DEATH; AND MOTIONS IN LIMINE  
TO EXCLUDE EVIDENCE OF PRIOR ACTS;  
EVIDENCE OF FINANCIAL CONDITIONS  
AND BUSINESS PRACTICES AND AUTOPSY  
PHOTOGRAPHS

(The Honorable Warren Darrow)

23 The State of Arizona, by and through Sheila Polk, Yavapai County Attorney, respectfully  
24 requests this Court to strike the "Declarations of Truc T. Do" and exhibits attached thereto filed  
25 in support of the following motions: Motion to Change Place of Trial Pursuant to Ariz. R. Crim.  
26

1 P, 10.3; Defendant's Motion to Compel Disclosure of all Information and Material Regarding  
2 the Medical Examiners' Opinions on Cause of Death; Motion in Limine to Exclude Evidence of  
3 Financial Conditions and Business Practices and Motion in Limine to Exclude Autopsy  
4 Photographs. In addition to striking the three "Declarations" and supporting exhibits, the State  
5 requests they not be published on the Superior Court's web site, and if they have already been  
6 published, that they be sealed or removed forthwith.  
7

8 In total, the three "Declarations" and the attached 78 exhibits are 488 pages in length and  
9 include court orders, search warrants, photographs, correspondence, transcripts, news articles  
10 from various sources and autopsy reports. While some of these items are clearly already a part of  
11 this Court's record, other items have been submitted for this Court's consideration without any  
12 consideration or challenge to their admissibility under the Arizona Rules of Evidence.  
13 Specifically, photographs, news articles and other evidence items are now before this Court  
14 without any foundation being presented. Similarly, transcripts of interviews replete with hearsay  
15 statements of possible trial witnesses have been submitted for this Court's consideration. This  
16 practice effectively circumvents the Arizona Rules of Evidence as they apply to admitting  
17 evidence in criminal cases and proceedings. Rule 1101(b), Ariz. R. Evid.  
18

19 Perhaps of greater concern is the fact that these Declarations and supporting exhibits,  
20 once filed, become public record. While the State is committed to full compliance with public  
21 records law, prior to releasing any documents, the State makes efforts to review and redact and  
22 to evaluate possible privacy concerns. In the instant case, unredacted copies of the autopsy  
23 reports of the three victims were submitted as exhibits. These documents had been ordered  
24 released as public records in a redacted format by this Court. While the State noted this error and  
25  
26

1 intervened in time to stop the publication of these documents, this example illustrates the  
2 potential hazards of this type of "Declaration."

3 Currently Defendant has pending before this Court a Motion for Change of Venue  
4 alleging that the extensive pre-trial publicity in this case has tainted the potential jury pool in  
5 Yavapai County. However, with the same pleading Defendant has now placed into public record  
6 evidence that may or may not be found admissible to the jury. In effect, the potential jury pool,  
7 not only in Yavapai County, but throughout the State of Arizona, now has access to evidence  
8 that might never be deemed admissible at trial.

10 The State has reviewed the Arizona Rules of Criminal Procedure and the Arizona Rules  
11 of Evidence and can find no authority for the submission of this type of pleading. Accordingly,  
12 the State respectfully requests this Court strike the referenced "Declarations" and all exhibits  
13 attached thereto. In addition, the State requests that any such documents currently posted on the  
14 Superior Court's web-site be removed forthwith.

16 RESPECTFULLY submitted this 9<sup>th</sup> day of July, 2010.

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18  
19 By Jennis M. M. Lane  
SHEILA SULLIVAN POLK  
YAVAPAI COUNTY ATTORNEY

23 **COPIES** of the foregoing emailed this  
24 9<sup>th</sup> day of July, 2010:

25 Hon. Warren Darrow  
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**COPIES** of the foregoing delivered this  
9<sup>th</sup> day of July, 2010, to

Thomas Kelly  
Via courthouse mailbox

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